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Attorney for Defendant  
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

GAIL GARIN, Individually and as  
Administrator of the Estate of CASIMIR  
POKORNY, Deceased; NAOTO  
IKEDA, Individually and as Personal  
Representative of the Estate of Reino  
Ikeda, Deceased; LIANNA MCCURDY;  
and DANIEL VERDERAME,  
  
Plaintiff,

vs.

ALINS SUMANG; SHELDON WATTS;  
CITY AND COUNTY OF HONOLULU;  
JOHN DOES 1-10; JANE DOES 1-10;  
DOE CORPORATIONS 1-10; DOE  
PARTNERSHIPS 1-10; DOE JOINT  
VENTURES 1-10; DOE LIMITED  
LIABILITY ENTITIES 1-10; DOE NON-  
PROFIT ENTITIES 1-10; DOE  
GOVERNMENTAL ENTITIES 1-10;

CIVIL NO. CV21-00104

DEFENDANT-PETITIONER CITY  
AND COUNTY OF HONOLULU'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION UNDER 28 U.S.C. §  
1441(c); DECLARATION OF  
COUNSEL; EXHIBITS "A" – "B";  
CERTIFICATE OF SERVICE

Trial Date: None.

DOE UNINCORPORATED ENTITIES  
1-10; and OTHER DOE ENTITIES 1-10,  
Defendants.

**DEFENDANT-PETITIONER CITY AND COUNTY OF HONOLULU'S  
NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. § 1441(C)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant-Petitioner CITY AND COUNTY OF HONOLULU, in accordance with 28 U.S.C. §§ 1331, 1441(c), 1446 submit this Notice of Removal from the Circuit Court of the First Circuit, State of Hawaii, to this Honorable Court. Defendant Sheldon Watts through communication with conflict counsel, (pending Honolulu City Council approval) consents to and joins in the Notice of Removal.

**STATE COURT PROCEEDINGS**

1. On November 8, 2019, the City received a Complaint, Demand for Jury, and Summons in an action entitled, Gail Garin, Individually and as Administrator of the Estate of Casimir Pokorny, Deceased; Lianna Mccurdy; and Daniel Verderame vs. Alins Sumang; Sheldon Watts; City and County of Honolulu, et al., Civil No. 1CCV-19-0002086, filed in the Circuit Court of the First Circuit, State of Hawaii on November 4, 2019 (“Complaint”). A true and accurate copy of the aforementioned Complaint is attached hereto as Exhibit “A”.

2. The Compliant alleged state five law claims: Negligence, Negligent

Pursuit, Dram Shop, Negligent/Intentional Infliction of Emotional Distress, and Punitive Damages.

3. On January 20, 2021, the City received a Verified First Amended Complaint, Demand for Jury Trial, and Summons in an action entitled, Gail Garin, Individually and as Administrator of the Estate of Casimir Pokorny, Deceased; Naoto Ikeda, Individually and as Personal Representative of the Estate of Reino Ikeda, Deceased; Lianna McCurdy; and Daniel Verderame vs. Alins Sumang; Sheldon Watts; City and County of Honolulu, et al., Civil No. 1CCV-19-0002086, filed in the Circuit Court of the First Circuit, State of Hawaii on January 20, 2021 (hereinafter referred to as the “FAC”). A true and accurate copy of the aforementioned FAC is attached hereto as Exhibit “B.”

4. The FAC alleges two federal claims and three state law claims.

5. Count II (Negligence/Danger Created by Affirmative Conduct) alleges a federal 42 U.S.C. § 1983 claim for violation of the Due Process Clause of the Fourteenth Amendment, claiming an officer may be held liable to protect an individual where the state has placed that individual in danger through its affirmative conduct. *See* Ex. B ¶¶ 32-35. Plaintiffs bring the Section 1983 claim, alleging, “a violation of rights protected by the Constitution or created by state or federal statute.” *See* Ex. B ¶ 33.

6. Count III (Negligent Training Re Custom/Practice/Policy) alleges a

federal § 1983 claim for failure to properly and adequately train its officers, including Watts, as to its Motor Vehicle Pursuits Policy by permitting its officers to follow fleeing suspects without notifying dispatch of the initiation of pursuit, and not using flashing lights and continuous siren. *See* Ex. B ¶¶ 81-83.

### **VENUE**

7. Venue is proper in the District of Hawaii under 28 U.S.C. §§ 1391(b) and 1441(a) because all defendants are residents of the State of Hawaii in which the district is located and the events giving rise to the claims occurred in the judicial district of Hawaii.

### **GROUND FOR REMOVAL**

8. The above-referenced action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, as the Complaint against the City includes claims or rights arising under the Constitution and laws of the United States, and is one which the City is entitled to remove to this Court pursuant to 28 U.S.C. § 1441(a) & (c).

### **TIMELINESS OF REMOVAL**

9. This Notice is timely under 28 U.S.C. §1446(b) because it is filed within thirty days of receipt on January 20, 2021, of the FAC, the first pleading to state federal claims.

### **CONSENT OF DEFENDANTS**

10. The City is in the process of obtaining conflict counsel for Defendant Watts, which requires Honolulu City Council approval. The Law Office of Cary Tanaka, who will be Watts' counsel upon City Council approval, indicated his consent to the removal, and will ratify his consent once the Council authorizes his retention. Upon information and belief, Defendant Sumang has not yet been served with the FAC.

### **NOTICE TO ADVERSE PARTIES AND STATE COURT**

11. Pursuant to 28 U.S.C. § 1446(d) a copy of this Notice shall be promptly served on Plaintiff's counsel of record and will be filed with the Clerk of the Court of the First Circuit, State of Hawaii.

### **CONCLUSION**

12. By filing this Notice and removing this action to this Court, the City does not waive or compromise any claims, defenses, objections, or motions available or state law, including the defense that one or more parties was added after the statute of limitations ran. The City expressly reserves the right to challenge the justiciability of the claim pursuant to the Federal Rules of Civil Procedure and/or any other rule or authority.

WHEREFORE, the City prays that the above referenced state court action now pending against it in the Circuit Court of the First Circuit, State of Hawaii, be removed therefrom to this Court.

DATED: Honolulu, Hawai‘i, February 18, 2021.

PAUL S. AOKI  
Acting Corporation Counsel

By: /s/ Donovan A. Odo  
DONOVAN A. ODO  
Deputy Corporation Counsel

Attorney for Defendant  
CITY AND COUNTY OF HONOLULU